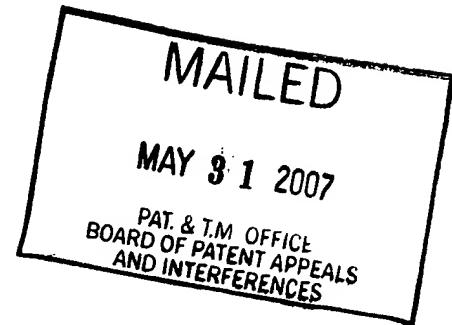


UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCE

Ex parte ROGER Q. SMITH

Application 09/153,621



ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received at the Board of Patent Appeals and Interferences (BPAI) on March 19, 2007. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner. The matters requiring attention prior to docketing are identified below.

APPEAL BRIEF

A review of the file indicates that on July 1, 2005, Appellant filed an Appeal Brief under the rules set forth in 37 CFR § 41.37(c). However, the Appeal Brief filed on July 1, 2005, does not fully comply with the new rules under 37 CFR § 41.37(c), which states in part:

(c)(1) The brief shall contain the following items under appropriate headings and in the order indicated in paragraphs (c)(1)(I) through (c)(1)(x) of this section, except that a brief filed by an appellant who is not represented by a registered practitioner need only substantially comply with paragraphs (c)(1)(I) through (c)(1)(iv) and (c)(1)(vii) through (c)(1)(x) of this section.

(ix) ***Evidence appendix.*** An appendix containing copies of any evidence submitted pursuant to §§ 1.130, 1.131, 1.132 of this title or of any other evidence entered by the examiner and relied upon by appellant in the appeal, along with a statement setting forth where in the record that evidence was entered in the record by the examiner. Reference to unentered evidence is not permitted in the brief. See § 41.33 for treatment of evidence submitted after appeal. This appendix may also include copies of the evidence relied upon by the examiner as to grounds of rejection to be reviewed on appeal.

(x) ***Related Proceedings Appendix*** – Copies of any decisions rendered by a court or the Board in any proceeding identified by the examiner in the “Related Appeals and Interference” section of the answer. An in-depth review of the Appeal Brief indicates that the following sections are missing from the Appeal Brief filed July 1, 2005.

A review of the Appeal Brief reveals that the following appendix headings are missing:

- 1) “Evidence Appendix,” as set forth in 37 CFR § 41.37(c)(1)(ix).
- 2) “Related Proceedings Appendix,” as set forth in 37 CFR § 41.37(c)(1)(x).

Appellant may file a paper providing the missing appendix heading as identified above.

CONCLUSION

Accordingly, it is

ORDERED that the application is returned to the examiner to:

- 1) to hold the Appeal Brief filed July 1, 2006, defective;
- 2) notify appellants to file a paper providing the Evidence appendix and the Related Proceedings appendix as required by 37 CFR 41.37;
- 3) issue and mail a form PTOL-90, consider the paper providing the Evidence Appendix and the Related Proceeding Appendix; and
- 4) for such further action as may be appropriate.

BOARD OF PATENT APPEALS
AND INTERFERENCES



PATRICK J. NOLAN
Deputy Chief Appeals Administrator
(571)272-9797

PJN/pgc

cc: Adan Ayala
The Black & Decker Corporation
701 E. Joppa Road TW199
Towson, MD 21286